

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MIKE HUBBARD AND LYNN)	
HUBBARD,)	
Plaintiffs)	
)	
vs.)	No. 4:19-CV-2283
)	
BLUE CROSS AND BLUE SHIELD)	
OF TEXAS, A DIVISION)	
OF HEALTH CARE SERVICE)	
CORPORATION,)	
Defendant)	

APPENDIX TO NOTICE OF REMOVAL

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business through its division Blue Cross and Blue Shield of Texas (“BCBSTX” or “Defendant”) respectfully files the following Appendix to Notice of Removal.

- Exhibit 1: Citation in Case No. 13189CV; *Mike Hubbard and Lynn Hubbard v. Blue Cross Blue Shield of Texas*; In the County Court at Law, Walker County, Texas, issued on May 24, 2019.
- Exhibit 2: Original Petition in Case No. 13189CV, filed May 24, 2019.
- Exhibit 3: Original Answer in Case No. 13189CV, filed June 20, 2019.
- Exhibit 4: Docket sheet in Case No. 13189CV
- Exhibit 5: List of all counsel of record.
- Exhibit 6: Civil Cover Sheet

Respectfully submitted,

By: /s/ Andrew F. MacRae
ANDREW F. MACRAE
State Bar No. 00784510
LEVATINO|PACE PLLC
1101 S. Capital of Texas Hwy
Building K, Suite 125
Austin, Texas 78746
Tel: (512) 637-1581
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andrew@lpfirm.com

Attorney for Defendant

CLERK OF THE COURT	ATTORNEY FOR PLAINTIFF
Kari A. French County Clerk 1100 University Ave, Suite 201 Huntsville, Texas 77340 (936) 436-4922	P. Jacob Paschal Haney.Moorman.Paschal, P.C. 1300 11th Street, Suite 405 Huntsville, Texas 77340 (936) 295-3712

CAUSE NO. 13189CV

THE STATE OF TEXAS
CITATION FOR PERSONAL SERVICE

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by Ten O'clock (10:00) A.M. on the Monday next following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you."

TO: BLUE CROSS BLUE SHIELD, DEFENDANT
C/O REGISTERED AGENT CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE, AUSTIN, TX 78701
OR WHEREVER THEY MAY BE FOUND

GREETINGS: You are hereby commanded to appear before the **COUNTY COURT AT LAW** of Walker County, Texas, to be held at the Courthouse of said County in the City of Huntsville, Texas, by filing a written answer to PLAINTIFF'S ORIGINAL PETITION AND WRITTEN DISCOVERY REQUESTS at or before Ten o'clock (10:00) A.M. on the Monday next after the expiration of twenty (20) days after the date of service hereof, a copy of PLAINTIFF'S ORIGINAL PETITION AND WRITTEN DISCOVERY REQUESTS which accompanies this citation in Cause Number 13189CV, filed on the docket of said Court on this date: **May 24, 2019**, and styled,

MIKE HUBBARD AND LYNN HUBBARD, Plaintiff

v.

BLUE CROSS BLUE SHIELD, Defendants

The officer executing this writ shall serve the same according to the requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Huntsville, Texas, this date: **May 24, 2019**.



ATTEST: KARI A. FRENCH,
COUNTY CLERK
WALKER COUNTY, TEXAS

By: Maren Gladden, Deputy
Maren Gladden

EXHIBIT 1

CAUSE NO. _____

MIKE HUBBARD AND LYNN HUBBARD	§	IN THE COUNTY COURT
Plaintiffs,	§	
	§	
V.	§	AT LAW OF
	§	
BLUE CROSS BLUE SHIELD OF TEXAS	§	
Defendant.	§	WALKER COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

TO THE HONORABLE COURT:

COME NOW, **MIKE HUBBARD and LYNN HUBBARD**, hereinafter referred to as Plaintiffs, complaining of **BLUE CROSS BLUE SHIELD OF TEXAS**, hereinafter referred to as Defendant, and for cause of action would show the Court as follows:

I.

Discovery Control Plan

1.1 Discovery is intended to be conducted under Level III of Tex. R. Civ. P. 190. Plaintiffs hope to enter into an agreement regarding discovery control plan specifically tailored for this case. However, if the parties cannot agree to a discovery control plan, Plaintiffs request that the court enter a discovery control plan specifically tailored for this case.

II.

Parties

2.1 Plaintiffs reside in Huntsville, Walker County, Texas.

2.2 Defendant, **BLUE CROSS BLUE SHIELD OF TEXAS**, is a Division of Health Care Service Corporation principal place of business located at 300 East Randolph Street, Chicago, IL 60601. Defendant's registered agent is Corporation Service Company, while can be

located at 211 East 7th Street, Suite 620, Austin, Texas 78701. Plaintiffs request that citation be issued and that Defendant's registered agent be served with process at the address listed above or wherever they may be found.

III.
Venue and Jurisdiction

3.1 This Court has jurisdiction over the Parties to this lawsuit. This Court has subject matter jurisdiction over the controversies between the Parties. The amount in controversy is within the jurisdictional limits of this Court. All conditions precedent to bringing this action have occurred.

3.2 This court has personal jurisdiction herein because Defendant is a Texas resident and/or Texas entity.

3.3 Venue is proper in Walker County because the events giving rise to this cause of action occurred in Walker County, Texas.

IV.
Factual Background

4.1 On January 1, 2016, Defendant was supposed to cancel Plaintiff Mike Hubbard's health insurance policy as he was eligible for Medicare. Unbeknownst to Plaintiffs, Defendant cancelled Plaintiff Lynn Hubbard's policy and not Plaintiff Mike Hubbard's policy.

4.2 In March 2016, Plaintiffs discovered that Defendant had not paid Plaintiff Lynn Hubbard's hospital bill.

4.3 From March 2016 through November 2017, Plaintiffs spent numerous hours on the phone with Defendant to find out what occurred. Eventually, Plaintiffs discovered Defendant had cancelled the wrong policy.

4.4 Therefore, Plaintiff Lynn Hubbard had no insurance when she needed it and

Plaintiff Mike Hubbard was paying for insurance he did not need.

4.5 Defendant failed to disclose and hid these issues from Plaintiffs.

V.

Causes of Action

5.1 Plaintiffs assert the following causes of action against Defendant.

A. Breach of Contract

5.2 Plaintiffs entered into a contract with Defendant. Defendant breached the contract by failing to provide insurance for Plaintiff Lynn Hubbard and failing to cancel Plaintiff Mike Hubbard's policy. Plaintiffs have performed all necessary conditions precedent to the contract. Therefore, Plaintiffs are entitled to damages for Defendant breaching the contract.

B. Negligence

5.3 Defendant owed a duty to Plaintiffs. Defendant breached that duty by failing to provide insurance for Plaintiff Lynn Hubbard and failing to cancel Plaintiff Mike Hubbard's policy. Defendant proximately caused the damages that Plaintiffs sustained.

C. Negligent Misrepresentation

5.4 Defendant made a representation to Plaintiffs in the course of Defendant's business or in a transaction in which Defendant had a pecuniary interest. Defendant supplied false information for the guidance of others. Defendant did not use reasonable care in obtaining or communicating the information. Plaintiffs justifiably relied on the representation. Defendant's negligent misrepresentation proximately caused the Plaintiffs' injury.

D. Unjust Enrichment

5.5 Plaintiffs have paid Defendant more than Defendant should have been paid. Therefore, Defendant has been unjustly enriched. Plaintiffs are entitled to recover the excess

money paid to Defendant.

E. Promissory Estoppel

5.6 Defendant made a promise to Plaintiffs. Plaintiffs reasonably and substantially relied on the promise to its detriment. Plaintiffs' reliance was foreseeable for Defendant. Injustice can be avoided only by enforcing Defendant's promise.

**VI.
Damages**

6.1 Plaintiffs sustained the following economic and actual damages as a result of the actions and/or omissions of Defendants described hereinabove:

- a. Actual damages;
- b. Expectation interest;
- c. Reliance interest;
- d. Restitution interest;
- e. Out of pocket expenses, including but not limited to \$42,393.28;
- f. Mitigation costs; and
- g. Contract rescission.

6.2 Plaintiffs sue to recover pre-judgment interest and post-judgment interest, as allowed by law.

6.3 Plaintiffs sue to recover court costs as allowed by law.

6.4 Plaintiffs seek recover of attorney fees pursuant to section 38.001 of the Texas Civil Practice and Remedies Code.

6.5 Plaintiffs are entitled to recover reasonable attorney fees from Defendant because the claims alleged herein arise from failure to provide insurance for Plaintiff Lynn Hubbard and failure to cancel Plaintiff Mike Hubbard's policy.

6.6 All of the claims asserted by Plaintiffs against Defendant are dependent on the same set of facts and circumstances and are thus intertwined to the point of being inseparable.

VII.
Attorney's Fees

7.1 Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiffs herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

VIII.
Request for Disclosure

8.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose information and material described in Rule 194.2 (a)(1) within fifty (50) days of service of this request.

IX.
Jury Demand

9.1 Plaintiffs demand a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Mike Hubbard and Lynn Hubbard, respectfully pray that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendant for the economic and actual damages requested hereinabove in an amount in excess of the minimum

jurisdictional limits of the Court, together with prejudgment and postjudgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which the Plaintiffs may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

HANEY MOORMAN PASCHAL, P.C.

By: 

P. JACOB PASCHAL
Texas Bar No. 24065878
1300 11th Street, Suite 405
Huntsville, Texas 77340
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jpaschal@hmp-attorneys.com

ATTORNEY FOR PLAINTIFFS

CAUSE NO. 13189cv**MIKE HUBBARD and LYNN
HUBBARD,****Plaintiffs,****v.****BLUE CROSS AND BLUE SHIELD
OF TEXAS,****Defendant.**§
§
§
§
§
§
§
§
§
§**IN THE COUNTY COURT****AT LAW****WALKER COUNTY, TEXAS****ORIGINAL ANSWER**

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business through its division Blue Cross and Blue Shield of Texas ("BCBSTX" or "Defendant"), files the following Original Answer.

I.**GENERAL DENIAL**

Defendant denies each and every, all and singular, the material allegations contained in the Plaintiffs' Original Petition and demands strict proof by a preponderance of the evidence. This constitutes a general denial pursuant to Rule 92 of the Texas Rules of Civil Procedure.

II.**AFFIRMATIVE DEFENSES**

Plaintiffs have failed to state a claim upon which relief can be granted.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that Plaintiffs take nothing by this lawsuit and Defendant recover its costs. Defendant further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE
State Bar No. 00784510
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1101 S. Capital of Texas Highway
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Austin, Texas 78746
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Fax: (512) 637-1583
andrew@lpfirm.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true and correct copy of this Original Answer on June 20, 2019, via e-mail and/or electronic filing, to the following counsel of record:

P. Jacob Paschal
Haney Moorman Paschal, P.C.
1300 11th Street, Suite 405
Huntsville, Texas 77340
jpaschal@hmp-attorneys.com

/s/ Andrew F. MacRae
Andrew F. MacRae

Skip to Main Content Logout My Account Search Menu New Civil Search Refine Search Back

Location : All Courts

REGISTER OF ACTIONS**CASE No. 13189CV****Mike Hubbard and Lynn Hubbard vs Blue Cross Blue Shield of Texas**§
§
§
§
§
§Case Type: **CV - Contract - Other**Date Filed: **05/24/2019**Location: **County Court At Law****PARTY INFORMATION****Defendant Blue Cross Blue Shield of Texas****Attorneys**
Andrew F. MacRae
Retained
512-637-1581(W)**Plaintiff Hubbard, Lynn**
Huntsville, TX 77340**P. JACOB PASCHAL**
Retained
936-295-3712(W)**Plaintiff Hubbard, Mike**
Huntsville, TX 77340**P. JACOB PASCHAL**
Retained
936-295-3712(W)**EVENTS & ORDERS OF THE COURT****OTHER EVENTS AND HEARINGS**05/24/2019 **Original Petition (OCA)**
05/24/2019 **Citation Issued**
06/20/2019 **Defendant's Original Answer****FINANCIAL INFORMATION**

	Plaintiff Hubbard, Mike		
	Total Financial Assessment		256.00
	Total Payments and Credits		256.00
	Balance Due as of 06/20/2019		0.00
05/24/2019	Transaction Assessment		256.00
05/24/2019	E-Filing Payment	Receipt # CC-62135	Hubbard, Mike (256.00)

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MIKE HUBBARD AND LYNN)	
HUBBARD,)	
Plaintiffs)	
)	
vs.)	
)	
BLUE CROSS AND BLUE SHIELD)	
OF TEXAS,)	
Defendant)	

LIST OF ALL COUNSEL OF RECORD

Counsel for Plaintiff:

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jpaschal@hmp-attorneys.com

Counsel for Defendant

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mike Hubbard and Lynn Hubbard

(b) County of Residence of First Listed Plaintiff Walker

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

P. Jacob Paschal, Haney, Moorman Paschal, P.C., 1300 11th Street, Suite 405, Huntsville, Texas 77340; 936/295-3712

DEFENDANTS

Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Andrew F. MacRae, 1101 S. Capital of Texas Hwy, Building K, Suite 125, Austin, Texas 78746; 512/637-8565

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1441

Brief description of cause:

Health insurance dispute

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/24/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Andrew F. MacRae

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAY 10 2019

EXHIBIT 6